

Amendments to the Drawings:

Formal drawings are submitted herewith and attached as Replacement Sheets after page 13 of this Amendment.

REMARKS

Amendments to the Specification and Abstract have been proposed to correct minor typographical errors in the application. No new matter has been added.

The Office Action mailed October 3, 2005, has been received and reviewed. Claims 9-12, 27, 29-40 and 42-50 are currently pending in the application. Claims 12, 34 and 46 stand rejected. Claims 35-39 and 47-50 have been objected to as being dependent upon rejected base claims, but the indication of allowable subject matter in such claims is noted with appreciation. Applicants have cancelled Claim 12, and respectfully request reconsideration of the application based upon the following remarks.

35 U.S.C. § 112 Claim Rejections

Claim 12 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Claim 12 is cancelled herein.

35 U.S.C. § 102 Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,012,336 to Eaton et al.

Claims 34 and 46 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Eaton et al. (U.S. Patent No. 6,012,336). Applicants respectfully traverse this rejection, as hereinafter set forth.

An anticipation rejection under 35 U.S.C. § 102(e) requires that the anticipatory application be filed before the invention thereof by the applicant. Although the priority filing date of Eaton et al. is September 6, 1995, the filing date of the continuation-in-part containing the material relied upon in the Action is December 7, 1998, which is after the priority date of the pending application. The material filed in the Eaton et al. continuation-in-part is therefore an improper 35 U.S.C. § 102(e) reference because the material was filed after the filing date of the pending application.

The pending application was filed on December 27, 2000. However, the pending application is a divisional application of Serial No. 08/773,272 (now U.S. Patent 6,153,358)

which was filed on December 23, 1996 and properly relies upon the filing date of that application. Therefore, the filing date of the pending application for 35 U.S.C. § 102(e) purposes is December 23, 1996.

The Eaton et al. reference was filed on December 7, 1998, and claims priority to U.S. Patent 5,798,283 ('283 Patent), which was filed on September 6, 1995. (A copy of the '283 Patent is being submitted with a Supplemental IDS filed concurrently herewith). A large portion of the Eaton et al. reference is reproduced in the Action and is relied upon to support the 35 U.S.C. § 102(e) anticipation rejection. However, the portion of the Eaton et al. reference cited in the Action does not appear in the '283 Patent and must therefore be the new material filed in the continuation-in-part application on December 7, 1998. The new material filed in the Eaton et al. reference is not anticipatory material under 35 U.S.C. § 102(e) because it was filed after the filing of the application to which the pending application claims priority. Applicants therefore respectfully request the withdrawal of the 35 U.S.C. § 102(e) anticipation rejection of claims 34 and 46 based on Eaton et al.

Furthermore, each of claims 34 and 46 include recitations of "a layer of material resistant to vapor hydrogen fluoride etchant" which is not described in the '283 Patent. Thus, the '283 Patent fails to anticipate Claims 34 and 46 and the new material added in the continuation-in-part of Eaton et al. was not described prior to the priority date of the pending application.

For at least the foregoing reasons, Applicants respectfully request the withdrawal of the 35 U.S.C. § 102(e) anticipation rejection of Claims 34 and 46 based upon Eaton et al.

Anticipation Rejection Based on U.S. Patent No. 5,198,382 to Campbell et al.

Claim 34 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Campbell et al. (U.S. Patent No. 5,198,382). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 34 includes, in part, the recitations “a layer of material resistant to vapor hydrogen fluoride etchant” which are not described by Campbell et al. In order to anticipate Claim 34, Campbell et al. must describe, either expressly or inherently, each and every element of Claim 34. *See*, M.P.E.P. §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Campbell et al. does not describe all of the recitations of Claim 34 and therefore fails to anticipate Claim 34.

The Action recites a passage from Campbell et al. which describes a photoresist layer (16) coating a masking layer (14). Those portions of the masking layer (14) not covered by the photoresist layer (16) are removed by an etchant. The etchant may include a wet hydrogen fluoride based etchant. *See, Action* at p. 6, and Campbell et al. at col. 4, line 60 through col. 5, line 20. Thus, the masking layer (14) described by Campbell et al. is at least not resistant to a wet hydrogen fluoride based etchant. Further, Campbell et al. fails to describe a masking layer that is resistant to a vapor hydrogen fluoride etchant as recited in Claim 34. The failure of Campbell et al. to describe the recitations of Claim 34 precludes an anticipation rejection of Claim 34 under 35 U.S.C. § 102(b).

For at least the foregoing reasons, Applicants request that the 35 U.S.C. § 102(b) rejection of Claim 34 be withdrawn.

Objections to Claims/Allowable Subject Matter

Claims 35 through 39 and 47 through 50 stand objected to as being dependent upon rejected base claims, but are indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Applicants appreciate the notice of allowable subject matter. However, in light of the remarks presented herein with respect to Claims 34 and 46, Applicants respectfully request that Claims 34 through 39 and 46 through 50 be allowed as written.

Claims 9 through 11, 27, 29 through 33, 40, and 42 through 45 have been allowed. Applicants appreciate the notice of allowable claims.

ENTRY OF AMENDMENTS

The amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search.

CONCLUSION

Claims 9 through 11, 27, 29 through 40, and 42 through 50 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



Devin R. Jensen
Registration No. 44,805
Attorney for Applicants
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: January 3, 2006
DRJ/ljb:lmh
Attachment: Replacement Formal Drawing Sheets

Document in ProLaw